

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

ROGER CAL JOHNSON

PLAINTIFF

VERSUS

CIVIL ACTION NO. 4:08cv114-DPJ-JCS

WARDEN DALE CASKEY, et al.

DEFENDANTS

REPORT AND RECOMMENDATION

On January 27, 2009, Plaintiff was granted *in forma pauperis* status in this action. Since that time, however, Plaintiff has had a third civil action or appeal dismissed under 28 U.S.C. § 1915 as frivolous, malicious, or for failure to state a claim upon which relief may be granted.¹ On November, 23, 2009, this court revoked Plaintiff's *in forma pauperis* status and required him to pay the filing fee within thirty days. Plaintiff has failed to pay as directed. Accordingly, the undersigned recommends that this action be dismissed pursuant to Fed. R. Civ. P. 41(b) for failure to prosecute.

The parties are hereby notified that failure to file written objections to the proposed findings, conclusions, and recommendation contained within this report and recommendation within fourteen (14) days after being served with a copy shall bar that party, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings and legal conclusions accepted by the district court. 28 U.S.C. §636; Fed. R. Civ. P. 72(b)(as amended, effective December 1, 2009); *Douglass v.*

¹Plaintiff' has on three prior occasions during detention had an action or appeal dismissed as frivolous, malicious, or for failing to state a claim: *Johnson v. Presley*, No. 4:07cv105 (N.D. Miss. July 26, 2007); *Johnson v. Dorsey*, No. 4:08cv23 (N.D. Miss. Apr. 4, 2008); of Mississippi; and *Johnson v. Lewis*, No. 08-60646 (5th Cir. July 2, 2009). In this latter case, the Fifth Circuit specifically noted in its opinion that the bar of 18 U.S.C. § 1915(g) was being imposed.

United Services Automobile Ass'n, 79 F.3d 1415, 1428-29 (5th Cir. 1996).

Respectfully submitted, this the 30th day of December, 2009.

/s/ James C. Sumner

UNITED STATES MAGISTRATE JUDGE